United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 16-0411**
	)	**Issued: June 10, 2016**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Indianapolis, IN, Employer	)	

Appearances:
Joseph E. Allman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2016 appellant, through counsel, filed a timely appeal from a July 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to a January 30, 2013 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence on appeal. However, the Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

In the present case, appellant filed two similar traumatic injury claims (Forms CA-1). On January 30, 2013 appellant, then a 45-year-old deportation officer, completed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury in the performance of duty on January 30, 2013 (OWCP File No xxxxxx119). He noted that he was using "breaching tools" while being instructed on breaching doors. On February 6, 2013 he completed another Form CA-1 also alleging that he sustained a left shoulder injury using breaching tools, but noting the date of injury as February 6, 2013 (OWCP File No. xxxxxx695). On June 26, 2015 OWCP administratively combined the two claims, with OWCP File No. xxxxxx119 as the master file.

The evidence from the January 30, 2013 claim indicates that appellant submitted a report dated February 21, 2013 from Dr. Ripley Worman, a Board-certified orthopedic surgeon. Dr. Worman provided a history of February 6, 2013 employment incidents that included breaking down doors and manual contact activities. He indicated that radiographs performed that day showed prior surgical changes and osteoarthritic changes. Dr. Worman diagnosed left shoulder pain and left shoulder osteoarthritis. The record indicates that Dr. Worman performed left shoulder hemiarthroplasty surgery on March 8, 2013, with a diagnosis of left shoulder osteoarthritis.

By letter dated March 13, 2013, OWCP requested that appellant submitted additional factual and medical evidence. It noted that he had claimed an injury on January 30, 2013, but Dr. Worman referred to a February 6, 2013 incident. On April 16, 2013 appellant submitted statements from two coworkers that he was involved in a training course that involved instruction of door breaching techniques and using tools such as sledge hammers and battering rams. The coworkers reported observing appellant on January 31, 2013.[3]

By decision dated April 24, 2013, OWCP denied the January 30, 2013 traumatic injury claim (OWCP File No. xxxxxx119), finding that the medical evidence of record was insufficient to establish the claim.

As to the February 6, 2013 traumatic injury claim (OWCP File No. xxxxxx695), on April 15, 2013 appellant submitted the February 21, 2013 report from Dr. Worman. By letter dated May 3, 2013, OWCP requested that appellant submit additional information. It noted that it had previously advised appellant of confusion regarding the date of injury in the January 30, 2013 claim.

By decision dated July 29, 2013, OWCP denied the February 6, 2013 traumatic injury claim on February 6, 2013 (OWCP File No. xxxxxx695), finding that the medical evidence of record was insufficient to establish the claim.

On August 27, 2013 appellant, through counsel, requested a hearing before an OWCP hearing representative of the July 29, 2013 OWCP decision, in OWCP File No. xxxxxx695. A hearing was held on February 13, 2014. At the hearing appellant's counsel asserted that the date of injury was January 30, 2013, not February 6, 2013. He indicated that appellant had seen a

[3] One coworker reported that the training course occurred from January 28 to February 15, 2013.

physician on February 6, 2013 and was "advised to file another CA-1." The hearing representative indicated that she believed the issue presented was for an injury on February 6, 2013, and she had not reviewed evidence from the January 30, 2013 claim. The transcript of the hearing indicates that the hearing representative stated, "I guess we [will] consider -- can consider this as an appeal related to that causal denial in the original case."

By decision dated April 14, 2014, the hearing representative affirmed the July 29, 2013 OWCP decision in OWCP File No. xxxxxx695. She indicated that the issue was whether appellant had established an injury on February 6, 2013. The hearing representative found that appellant should pursue any further action for an injury on January 30, 2013 under that claim.

On April 13, 2015 OWCP received an April 10, 2015 request for reconsideration from appellant's counsel that identified both OWCP case files. Counsel did not identify a specific decision but noted the date of injury as January 30, 2013. The medical evidence submitted included a March 23, 2014 report from Dr. Worman, who opined that appellant sustained a left shoulder injury on January 30, 2013. Dr. Worman reported that appellant had hit a door using his left shoulder, and appellant had significant pain in the left shoulder. He indicated that radiographs showed prior shoulder surgery with significant osteoarthritic changes, and appellant underwent left shoulder surgery on March 8, 2013. Dr. Worman opined that appellant sustained an injury on January 30, 2013 that caused further cartilage damage to the shoulder requiring surgery. He noted that appellant did have preexisting arthritic changes, but had been doing full duties until his new injury. Appellant also submitted additional treatment reports from Dr. Worman. In a report dated September 8, 2014, Dr. Worman indicated that appellant was doing well and needed no further orthopedic intervention.

By decision dated July 9, 2015, OWCP found that appellant was entitled to a merit review of the April 24, 2013 OWCP decision in OWCP File No. xxxxxx119. It found that because the hearing representative had mentioned at the February 13, 2014 hearing that she could consider this as an appeal regarding the original case, appellant was entitled to a merit review with respect to a claim for a January 30, 2013 employment incident. OWCP, however, denied modification, finding that the medical evidence of record was insufficient "to alter the decision dated April 14, 2014 (April 24, 2013)" and denied modification.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[4] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[5] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[6] In order to determine whether

[4] 5 U.S.C. § 8102(a).

[5] *Valerie C. Boward*, 50 ECAB 126 (1998).

[6] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[7]

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[8] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[9]

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS

In the present case, appellant filed two traumatic injury claims with different dates of injury: January 30, 2013 and February 6, 2013. Both claims alleged the use of breaching tools and a left shoulder injury, and two claim numbers were created. OWCP issued a decision dated April 24, 2013, denying the January 30, 2013 claim. After receiving a July 29, 2013 decision denying the February 6, 2013 claim, appellant requested a hearing before an OWCP hearing representative.

At the February 13, 2014 hearing, appellant reported there was only one date of injury, January 30, 2013. OWCP has administratively combined the two claim files, with OWCP File No. xxxxxx119 serving as the master file.[11] Thus the issue before the Board is whether appellant has established a left shoulder injury casually related to the January 30, 2013 employment incident.

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

[9] *Id.*, Chapter 2.805.3(d) (January 2013).

[10] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[11] *See T.M.*, Docket No. 14-1310 (January 2, 2014) (OWCP procedures contemplate that duplicate cases should not be created and development should not occur under the duplicate case).

The Board finds that the medical evidence of record is insufficient to establish an injury causally related to the January 30, 2013 employment incident. Dr. Worman had initially provided an incorrect date of injury in his February 21, 2013 report. In the March 23, 2014 report, Dr. Worman provided a history of the January 30, 2013 incident. However, he did not provide a rationalized medical opinion on causal relationship between a diagnosed left shoulder condition and the January 30, 2013 employment incident. As Dr. Worman noted, appellant had a history of prior left shoulder surgery and osteoarthritic changes. The diagnosis provided was left shoulder osteoarthritis. Dr. Worman did not clearly explain what injury occurred from the incident and why he felt it contributed to the need for surgery on March 8, 2013. He referred briefly to cartilage damage without further explanation.[12] Dr. Worman also noted that appellant was performing regular duties prior to the incident. Being asymptomatic prior to an incident, however, does not establish causal relationship. A medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after is insufficient, without supporting rationale, to establish causal relationship.[13]

The Board accordingly finds that the medical evidence of record is insufficient to meet appellant's burden of proof in this case. The record does not contain a medical report with a complete and accurate factual and medical history, and a rationalized opinion on causal relationship between a diagnosed condition and the January 30, 2013 employment incident.

On appeal, appellant's counsel argues that the medical evidence from Dr. Worman was sufficient to require further development. For the reasons discussed above, the Board finds the medical evidence is of diminished probative value to the issue presented.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an injury causally related to a January 30, 2013 employment incident.

[12] A physician should describe the pathophysiologic mechanism whereby the employment incident would contribute to the diagnosed condition. *See K.M.*, Docket No. 09-0003 (issued April 9, 2009).

[13] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 9, 2015 is affirmed.

Issued: June 10, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board